A.F.R.

27-07-2006

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.5235/2000

CORAM: Hon'ble Shri S.R.Nayak, Chief Justice &
Hon'ble Shri D.R.Deshmukh, J.

PETITIONERS : 1. The State of M.P., through the Secretary, Social Welfare Department Mantralaya, Vallabh Bhawan, Bhopal.

2. The Director, Social Welfare, M.P. Bhopal (M.P.).

3. The Commissioner (Revenue), Bilaspur Revenue Division, Bilaspur (M.P.).

4. The Joint Director, Panchayat & Social Sewa, Bilaspur Division, Bilaspur (M.P.).

V/s

Respondents : 1. Smt. Janki Bai Tiwari, W/o late Motilal Sharma, aged about 58 years, R/o House No. D/286, Yadunandan Nagar, Bilaspur, Tahsil and Distt. Bilaspur (M.P.).

: 2. M.P. State Administrative Tribunal, Raipur Bench, Raipur.

Shri Utkarsh Verma, learned Dy. Govt. Advocate for the petitioners/State.
None appears for respondent No.1.

ORAL ORDER
(Passed on 27.07.2006)

The following oral order of the Court was passed by **S.R.NAYAK, C.J.**

The State of Madhya Pradesh (now the State of Chhattisgarh), and its authorities being aggrieved by the order of the M. P. Administrative Tribunal, Raipur Bench, dated 8.10.99 passed in O.A.No.702/98 have preferred this Writ Petition under Article 227 of the Constitution of India. The first respondent herein is the widow of late Motilal Sharma. Motilal Sharma was appointed as Gram Sahayak, Social Welfare Department and served as such only during 10.09.1964 and 15.03.1966. He died on 10.08.1969. When the matter stood thus, after a long lapse of more than

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30 years, the widow of the deceased-employee instituted Original Application No.702/1998 praying for family pension. The application was contested by the State by filing return. In the return, it was contended that the petitioner's husband was appointed as Gram Sahayak on 10.09.1964, but, his services were terminated with effect from 15.03.1966, because, he was unauthorisedly absenting throughout from his duties. The State contended that the deceased-employee did not put in required number of years of service to enable his widow to claim family pension. The Tribunal, however, having opined that the widow of the deceased-employee is entitled to family pension under sub-rule (2) of Rule 47 of the M.P. Civil Services (Pension) Rules, 1976 (for short 'the Pension Rules') allowed the application of the first respondent and directed the State and State authorities to pay family pension to the first respondent with effect from the date of death of the first respondent's husband, i.e. 10.08.69. Hence, this writ petition. When the case was called, only learned Dy. Government Advocate appeared. None appeared on behalf of the first respondent nor any representation was made on her behalf.

2. We have heard learned Dy. Government Advocate Shri Utkarsh Verma. It was contended by learned Dy. Government Advocate that the opinion of the Tribunal that the first respondent is entitled to family pension under sub-rule (2) of Rule 47 of the Rules is *ex facie* erroneous and liable to be interfered with. In the writ petition, return is filed on behalf of first respondent. In para 4 of the said return, it is claimed that the deceased-Motilal Sharma was in service from 19.8.1963 till he died on 10.08.1969. This assertion seems to be an afterthought. In the return filed by the State and State Authorities before the Tribunal, it was specifically pleaded that though deceased was appointed as Gram Sahayak w.e.f. 10.09.1964, his

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services were terminated on 15.3.1966 on the ground of unauthorized absent continuously, and that only after termination of his services, after a lapse of three years, he died on 10.8.1969. This assertion made by the State and State Authorities was not denied at all before the Tribunal by filing any rejoinder. As could be seen from the impugned order, even the Tribunal had accepted the fact that the deceased was in service only between 10.09.1964 and 15.3.1966. Therefore, the question to be considered is that if the husband of the first respondent was in service only between 10.09.1964 and 15.3.1966, whether his widow could claim contributory family pension under Rule 47 of the Pension Rules. It is nobody's case that sub-rule (1) of Rule 47 of the Pension Rules applies to the facts of this case. The Tribunal has granted contributory family pension to the widow of the deceased under sub-rule (2) of Rule 47 of the Pension Rules. Sub-rule (2) of Rule 47 reads as follows:

> "(2) [Without prejudice] to the provisions contained in sub-*rule (3), where a Government servant dies* ---
>
> [(a) while in service provided he had been medically examined and found fit for appointment under the Government.]
>
> (b) after retirement from service and was on the date of death in receipt of a pension or compassionate *allowance, referred to in Chapter V other than the* pension referred to in rule 34, on the date of death,
>
> the family of the deceased shall be entitled to a contributory family *pension (hereinafter in this rule referred to as Family Pension) the* amount of which shall be determined as follows:

Pay of Government servant (1)	Amount of monthly family pension (2)
(i) Below Rs.400.	30 per cent of pay subject to a minimum of Rs.60 and a maximum of Rs.100.
(ii) Rs.400 and above but not exceeding Rs.1200.	15 percent of pay subject to a minimum of Rs.100 and a maximum of Rs.160.
(iii) Above Rs.1200.	12 per cent of pay subject to a minimum of Rs.160 and a maximum of Rs.250.

(2A) The amount of family pension shall be fixed at monthly *rates and be expressed in whole rupees and where the family* pension contains a fraction of a rupee it shall be rounded off to next higher rupee provided that in no case family pension in excess of the maximum [prescribed] under this rule shall be allowed."

3. This case cannot be brought under clause (a) or clause (b) of sub-rule (2). Clause (a) has no application because the husband of the first respondent did not die while in service. This case could not be brought under clause (b) of sub-rule (2) of Pension Rules also. It is not the case of the first respondent that after his retirement from service, on the date of his death, husband of the first respondent was in receipt of a pension or compassionate allowance referred to in Chapter V. Admittedly, the deceased-employee was not receiving any pension or allowance till his death.

4. Apart from the legal position stated above, the Tribunal ought not to have entertained the stale claim brought before it by the first respondent. Admittedly, the husband of the first respondent died on 10.8.1969 whereas after a long lapse of 30 years and more, the first respondent chose to institute the Original Application. Therefore, we cannot sustain the order made by the Tribunal impugned in this writ petition. The writ petition is allowed and the impugned order of the Tribunal is set aside and the O.A.No.702/98 filed by the first respondent is dismissed. However, it is directed that 50% of the amount directed to be deposited by the State as directed by this Court earlier towards family pension payable to the first respondent if the same is paid to her shall not be recovered from her.

No costs.

Sd/-
Chief Justice

Sd-/
Dilip Raosaheb Deshmukh
Judge